

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2015**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** Senate Bill 503 (First Edition)

**SHORT TITLE:** Sex Offense With Student/Charter Schools.

**SPONSOR(S):** Senators J. Jackson, Tillman, and Soucek

<b>FISCAL IMPACT</b>					
(\$ in millions)					
<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19	FY 2019-20
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Administrative Office of the Courts; Indigent Defense Services; Department of Public Safety					
<b>EFFECTIVE DATE:</b> December 1, 2015					
<b>TECHNICAL CONSIDERATIONS:</b>					
None					

**FISCAL IMPACT SUMMARY:**

The proposed bill may have a fiscal impact to address new chargeable offenses being enforced, adjudicated, and having penalties applied to those convicted of the new offenses. However, given that there is no historical data on this new offense or similar offenses to use as a proxy for predicting the total number of new offenses, the Fiscal Research Division cannot reasonably estimate the total additional costs that may be incurred. The following costs may be incurred for every one person charged and convicted of this crime:

- Administrative Office of the Courts: \$286-\$752 per disposition
- Indigent Defense Services: \$204-\$462 per disposition
- Department of Public Safety (DPS) - Prison Section: \$2,106-\$4,914 per conviction resulting in an active sentence
- DPS - Community Corrections: Minimum of \$1,175 per conviction

Please see the Assumptions and Methodology section for additional information.

## **BILL SUMMARY:**

The bill amends G.S. 14-202.4, Taking indecent liberties with a student, to expand the definition of “school personnel” to include charter and nonpublic school employees and contractors. In addition, it amends G.S. 14-27.7, intercourse and sexual offenses with certain victims; consent no defense, to expand the definition of “school personnel” to include charter and nonpublic school employees and contractors. The bill expands the scope of two felony and two misdemeanor offenses.

## **ASSUMPTIONS AND METHODOLOGY:**

### **General**

The Sentencing and Policy Advisory Commission prepares prison population projections for each bill containing a criminal penalty. The Commission assumes for such bills that expanding existing or creating new criminal offenses produces no deterrent or incapacitative effect on crime. Therefore, the Fiscal Research Division does not assume deterrent effects for any criminal penalty bill.

S.L. 2011-192 (H.B. 642), the Justice Reinvestment Act (JRA), made changes to North Carolina’s court system, corrections system (both to prisons and probation), and to post-release supervision. All F-I felons are now subject to nine months of post-release supervision (PRS). B1-E felony PRS has been increased from nine months to twelve months. Due to the lack of historical data about JRA implementation, it is not possible to estimate the number of prison beds that may be needed as a result of revocations.

JRA also created the Statewide Misdemeanant Confinement Program (SMCP) for housing misdemeanants with sentences between 90 and 180 days in county jails (misdemeanants with shorter sentences were already the responsibility of the counties). County participation in the program is voluntary. The SMCP pays participating counties for misdemeanants’ housing, transportation, and medical costs. In 2014, the program was expanded to include all misdemeanants with sentences longer than 90 days. The Sentencing and Policy Advisory Commission does not track county jail capacity, so it is not possible to estimate the impact of new or increased misdemeanor penalties on county jails.

Since the bill expands the scope of existing offenses, the Sentencing Commission cannot estimate the impact of this bill on the prison population. In 2014, there were three convictions for violating G.S. 14-202.4 and four convictions for violating G.S. 14-27.7. It is not known how many offenders might be convicted and sentenced under the expanded statute.

### **Judicial Branch**

The Administrative Office of the Courts provides Fiscal Research with a fiscal impact analysis for most criminal penalty bills. For such bills, fiscal impact is typically based on the assumption that court time will increase due to anticipated increases in trials and corresponding increases in workload for judges, clerks, and prosecutors. This increased court time is also expected to result in greater expenditures for jury fees and indigent defense.

The bill expands the scope of four existing offenses: one Class G felony offense, one Class I felony offense, and two Class A1 misdemeanor offenses. In 2014, 14 defendants were charged with the Class G felony, and 15 defendants were charged with the Class I felony under the existing statutes. AOC does not have a criminal offense code for the Class A1 misdemeanors, which is an indication of how infrequently they are charged. AOC is unable to estimate the expanded number of individuals that may be charged for these offenses.

AOC provides estimates of the average cost to the court for a charge by offense class. For every additional person charged with a Class G felony, the average cost to the court would be \$752. For every additional person charged with a Class I felony, the average cost to the court would be \$365. For every additional person charged with a Class A1 misdemeanor, the average cost to the court would be \$286.

IDS has provided Fiscal Research with the frequency and cost of indigent defense services for each level of crime, including the cost differentials for district and superior court with and without a trial and the percentage of cases handled in each category. Fiscal Research used this data to calculate a weighted average of IDS costs. In FY 2011-12, 78% of Class G felony cases were handled through the Office of Indigent Defense Services (IDS). The weighted average cost of a new Class G felony is \$462 per case for a private appointed counsel (PAC) attorney. In the same year, 68% of Class I felony cases were handled through the Office of Indigent Defense Services (IDS). The weighted average cost of a new Class I felony is \$315 per case for a private appointed counsel (PAC) attorney. In the same year, 52% of Class A1 misdemeanor cases were handled through the Office of Indigent Defense Services (IDS). The weighted average cost of a new Class A1 misdemeanor is \$204 per case for a private appointed counsel (PAC) attorney. In districts that have Public Defender offices, cases may be handled by those offices. In those instances, this cost may not be incurred.

### **Department of Public Safety –Prison Section**

The chart below depicts the projected inmate population relative to available prison bed capacity system-wide. Capacity projections assume operation at Expanded Operating Capacity,<sup>1</sup> and represent the total number of beds in operation, or authorized for construction or operation as of December 2014.

Based on the most recent population projections and estimated bed capacity, there are surplus prison beds available for the five-year fiscal note horizon and beyond. Therefore, no additional beds will be required unless the projected number of additional inmates resulting from a bill (row four) exceeds the projected number of beds under the inmate population (row three).

Since the bill expands the scope of existing offenses, the Sentencing Commission does not have any historical data from which to estimate the impact of this bill on the prison population. It is not known how many beds may be required as a result of this bill.

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<sup>1</sup> Expanded Operating Capacity (EOC) is: 1) the number of single cells housing one inmate, 2) the number of single cells housing two inmates, and 3) the number of beds in dormitories, allowing between 35 (130% of Standard Operating Capacity) and 50 (SOC) square feet per inmate.

<b>Population Projections and Bed Capacity Five Year Impact</b>					
	<b>June 30 2016</b>	<b>June 30 2017</b>	<b>June 30 2018</b>	<b>June 30 2019</b>	<b>June 30 2020</b>
1. Inmates <sup>2</sup>	37,360	37,522	37,348	37,462	37,610
2. Prison Beds (Expanded Capacity)	38,749	38,749	38,749	38,749	38,749
3. Beds Over/(Under) Inmate Population	1,389	1,227	1,401	1,287	1,139
<b>4. Additional Inmates Due to this Bill<sup>3</sup></b>	<b>No estimate available</b>				
<b>5. Additional Beds Required</b>					

In addition to the capital costs that may be associated with additional bed needs, there are also per diem costs for housing inmates. The cost to add one additional inmate to the prison system is \$11.53 per day, or \$351 per month, which includes the cost of food, clothing, and health care. In FY 2013-14, 40% of Class G felony offenders received active sentences averaging 14 months. For every one Class G felony offender receiving an active sentence, the cost to the prison section will be \$4,914 (\$351 monthly cost times 14 months). In the same year, 16% of Class I felony offenders received active sentences averaging six months. For every one Class I felony offender receiving an active sentence, the cost to the prison section will be \$2,106 (\$351 monthly cost times 6 months).

This bill expands two existing Class A1 misdemeanor offenses. The North Carolina Sentencing and Policy Advisory Commission expects no impact on the prison population because all misdemeanor offenders who receive active sentences will serve them in the local jail. Therefore, the Department of Public Safety does not anticipate an impact on prison custody projections.

**Department of Public Safety – Community Correction Section**

All active sentences for felony offenses now result in a minimum of twelve months of post-release supervision (PRS) for B1-E level offenses and a minimum of nine months of PRS for F-I level offenses. Additionally, for felony offense classes E through I offenders may be given non-active (intermediate or community) sentences exclusively, or in conjunction with imprisonment (split-sentence). Sanctions include electronic house arrest, community service, substance abuse treatment, participation in educational or vocational skills development, payment of court costs, fines, and restitution, and short-term jail sentences not exceeding six days per month.

JRA essentially eliminated the distinction between “community” and “intermediate” supervision. Under structured sentencing, the two types of supervision were each defined by a set of specific sanctions. Under JRA, both community and intermediate probation may now include electronic monitoring, short-term periods of confinement, substance abuse assessment, monitoring, and treatment, participation in educational programs or vocational skills development. Whether a probationer is subject to more stringent conditions is determined by the results of a risk-needs assessment administered by the Department of Public Safety.

<sup>2</sup> The Sentencing and Policy Advisory Commission prepares inmate population projections annually. These projections are derived from: historical information on incarceration and release rates under Structured Sentencing; crime rate forecasts by a technical advisory group; probation and offender revocation rates; and the decline (parole and max-outs) of the stock prison population sentenced under prior sentencing acts. Projections were updated in February 2015.

<sup>3</sup> Criminal penalty bills effective December 1, 2015 should not affect prison population and bed needs until FY 2016-17 due to the lag time between offense charge and sentencing - six months on average. No delayed effect is presumed for the Court System.

All types of post-release supervision are supervised by the Community Corrections Section (CCS); CCS also oversees community service. Supervision by a probation officer costs \$130.50 per offender, per month; no cost is assumed for those receiving unsupervised probation, or who are only ordered to pay fines, fees, or restitution. Total costs are based on average supervision length and the percentage of offenders (per offense class) sentenced to active sentences requiring post-release supervision and supervised probations.

In FY 2013-14, 40% of Class G felony offenders received active sentences; 60% received probation. All active sentences result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 29 months. Therefore, at a minimum, one conviction resulting from the expanded scope of this crime will require at least nine months of supervision. The cost of nine months of supervision is \$1,175 per offender (\$130.50 per month times nine months).<sup>4</sup>

In FY 2013-14, 16% of Class I felony offenders received active sentences; 84% received probation. All active sentences result in nine months of post-release supervision (PRS). The average length of probation imposed for this offense class was 23 months. Therefore, at a minimum, one conviction resulting from the expanded scope of this crime will require at least nine months of supervision. The cost of nine months of supervision is \$1,175 per offender (\$130.50 per month times nine months).

In FY 2013-14, 21% of Class A1 misdemeanor offenders received active sentences; 79% received probation. The average length of probation imposed for this offense class was 17 months. Therefore, at a minimum, one conviction resulting from the expanded scope of this crime will require at least 17 months of supervision. The cost of 17 months of supervision is \$2,219 per offender (\$130.50 per month times 17 months).

**SOURCES OF DATA:** Department of Public Safety; Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission; Office of Indigent Defense Services.

**TECHNICAL CONSIDERATIONS:** None

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<sup>4</sup> Due to the effective date of December 1, 2015 and the typical lag time between charge and conviction (6 months), little impact is assumed for CCS in FY 2015-16. Though some offenders may come under CCS supervision during this time, this note assumes an even entry over the course of FY 2016-17.



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